IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3921 OF 2005

Shri A.K. Yenpure. ...Petitioner.
Vs.
Bank Karmachari Sangh & Ors. ...Respondents.
....
Mr. S.S. Bombale Deshmukh for the Petitioner.
Mr. S. K. Talsania with Mr. P.M. Huddar & Mr. A.S. Rao for Respondent Nos.1 and 4.
Mr. A.D. Patwardhan for Respondent Nos.2 and 3.
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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

July 22, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing.

2. The dispute in the present case arises out of the election of the office bearers of the Bank Karmachari Sangh, Respondent No.1 herein. The First Respondent is a representative and approved Union under the Bombay Industrial Relations Act, 1946

for Co-operative Banks in Pune and the District of Pune. The Union enjoys the status of a sole bargaining agent. Elections were held sometime in 2002 in pursuance of certain directions that were issued by a Division Bench of this Court on 25th February 2002 in **Vikas Kashinath Shikarkhane vs. Shrirang Jagannath Bhide & Others** (Writ Petition 1016 of 2002). Respondent Nos.2 to 4 are stated to have been elected as the office bearers at the elections that were held. The Second Respondent, Sanjay B. Abhyankar was elected as Joint Secretary and the Third Respondent, Vijay A. Nildawar was elected as Treasurer. The Fourth Respondent, Shriram J. Bhide is stated to have been elected as President. The Third Respondent is stated to have issued a notice to show cause to the Fourth Respondent for expulsion on the ground that he had been dismissed from service of the Rupee Co-operative Bank and on the ground that he was guilty of certain financial irregularities. The Fourth Respondent is alleged to have been expelled from the Union on 25th November 2003. On 3rd December 2003, it is alleged that the Fourth Respondent in turn convened a meeting and that the Second and Third Respondents came to be

expelled from the Union. The Fourth Respondent is thereupon alleged to have got himself elected as General Secretary of the Union. According to the Petitioner, a situation thereupon resulted where there was utter confusion as to who were the office bearers of the Union. A situation has arisen where there are two sets of office bearers. The Petitioner thereupon obtained a Consent certificate on 27th May 2004 from the Deputy Registrar of Trade Unions, Pune under Section 28-1A of the Trade Unions Act, 1926. The Deputy Registrar by this certificate certified that he was satisfied that a dispute of the nature specified in sub-section (1) of Section 28-A existed as to whether the Second, Third and Fourth Respondents were office bearers of the Union. Accordingly, the consent of the Deputy Registrar was granted to refer the dispute to the Industrial Court at Pune.

3. An application was moved before the Industrial Court for the appointment of an administrator to take charge of the Union and for holding fresh elections. The Industrial Court noted that the Fourth Respondent opposed the prayer that was made before it for

holding fresh elections on the ground that the consent certificate does not speak of fresh elections. The Industrial Court by its order dated 31st March 2005 rejected the application for the grant of interim relief. The Industrial Court held that there was a serious dispute between the office bearers of the Union with each faction asserting that there was an expulsion of the other. The Court specifically observed in para 17 of its order that the Fourth Respondent opposed the holding of fresh elections. Having held that there was a serious dispute between the office bearers, the Industrial Court still rejected the application for the grant of interim relief by its impugned order. That order has been challenged before this Court in the proceedings under Article 226 of the Constitution.

4. After the order of the Industrial Court of 31st March 2005, the Fourth Respondent purporting to act as a General Secretary of the Union proceeded to hold fresh elections on 1st May 2005. By a letter dated 19th May 2005, the Fourth Respondent informed the Deputy Registrar of Trade Unions that "as per the order of the

Hon'ble High Court", under the provisions of the Constitution of the Union and the resolution passed by the Executive Committee, elections for the years 2005-08 have been held. It may be noted that clause 22 of the Constitution of the First Respondent provides for the holding of the Annual General Meeting of all the members of the General Council to elect office bearers and members of the Executive Committee.

5. In support of the petition, it has been urged before the Court that the admitted position is, that there exists a serious dispute between the office bearers of the Union. There are two factions each of which has claimed to represent the Union. The Fourth Respondent opposed the plea which was made before the Industrial Court for the holding of fresh elections but after the order of the Industrial Court dated 31st March 2005 he unilaterally proceeded to hold elections despite the fact that the Industrial Court was seized of the main dispute. It was submitted that the Fourth Respondent made a palpably false representation before the Deputy Registrar, Trade Unions that the elections were being

held in pursuance of the order of this Court.

6. An affidavit has been filed on behalf of the Fourth Respondent on 19th July 2005 admitting that the Fourth Respondent had intimated to the Deputy Registrar of Trade Unions by his letter dated 19th May 2005 that elections have been held “as per the order of the Hon'ble High Court”. The Fourth Respondent has admitted that there was no order of this Court to hold elections for the period 2005-08. It is sought to be submitted that the reference to the order of this Court was to the previous order of the Court governing the elections for the period 2002-05.

7. We are constrained to take a serious view of the conduct of the Fourth Respondent. The Fourth Respondent opposed the plea that was made before the Industrial Court for the holding of elections since admittedly the term of the previously elected body had come to an end. However, though the Industrial Court was seized of the dispute, the Fourth Respondent unilaterally proceeded to hold elections and then sought to justify his conduct

by making a false representation that the elections had been held in pursuance of the orders of this Court. It is an admitted position that there was no order of this Court directing or permitting the Fourth Respondent to hold elections for the period 2005-08. The Industrial Court has noted that there is a serious dispute between the office bearers of the Union. In the face of this finding which has not been disputed by any of the contesting parties before the Court, we are of the view that this is a fit case for the appointment of an administrator. Under sub-section (1) of Section 28-A, "where there is a dispute as respects whether or not any person is an office bearer or member of a registered Trade Union (including any dispute relating to wrongful expulsion of any such office-bearer or member), or where there is any dispute relating to the property (including the account books) of any registered Trade Union, any member of such registered Trade Union for a period of not less than six months, may, with the consent of Registrar and in such manner as may be prescribed, refer the dispute to the Industrial Court constituted under the Bombay Industrial Relations Act, 1946, for decision". Under sub-section (2) of Section 28A, the Industrial

Court is empowered, pending the decision of the dispute, to make an interim order specifying or appointing any person or appointing a Committee of Administration for any purpose under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purposes of the union pending the decision. We are of the view that having regard to the findings which have been arrived at by the Industrial Court noting the existence of serious disputes, a fit and proper case for the appointment of administrator is made out. There are rival factions claiming to represent the Union. This is not just an internal matter concerning the disputes between the office bearers inter se. The Union is a recognised and approved Union under the BIR Act, 1946 and has the status of a sole bargaining agent. The welfare of a large body of workmen is involved. We have also been constrained to take a serious note of the conduct of the Fourth Respondent in unilaterally proceeding to hold elections after having opposed the very prayer before the Industrial Court for holding elections and in thereafter, seeking to justify his action with reference to a direction that was never issued by this Court.

8. In the circumstances, this petition has to be allowed and is accordingly allowed. The impugned order of the Industrial Court dated 31st March 2005 is quashed and set aside. The Industrial Court is directed to appoint an administrator under sub-section (2) of Section 28-A during the pendency of the proceedings before it. The Industrial Court shall nominate an Administrator in compliance with this order within a period of one week of receipt of a duly authenticated copy of this order. The Industrial Court is requested to expedite the disposal of the proceedings and to endeavour to do so preferably by 31st December 2005. The Industrial Court will consider the question of what, if any, consequential directions should be issued in the interests of justice, including the holding of elections. The Petition is accordingly disposed of. There shall be no order as to costs.

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